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LANSING

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Analysis of Enrolled House Bill 4208 and Enrolled Senate Bill 25

Topic: Deaf Person Interpreters
Sponsor: Representative Spade and Senator Gleason
Co-Sponsors: Representatives Miller, Clemente, LeBlanc, Coulouris, and Leland
Committee: House Regulatory Reform
Senate Judiciary

Date Introduced: January 24, 2007 (Senate Bill 25) and February 7, 2007 (House Bill 4208)

Date Enrolled: June 6, 2007 (Senate Bill 25) and June 14, 2007 (House Bill 4208)

Date of Analysis: June 15, 2007

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: In 1990 Congress passed and the President signed the federal Americans with Disabilities Act (ADA). This federal law imposes an obligation on employers, state and local governments, and businesses providing a variety of services to the public to provide for effective communication in such situations. Title I of the ADA applies to employment situations. Title II covers state and local government programs and services, including public schools and colleges. Title III applies to private entities, which are known as “public accommodations” in this title. The types of businesses covered by Title III of the ADA include places of lodging, restaurants, recreational facilities, banks, theaters, pharmacies, doctors and hospitals, private schools and colleges. In the case of a deaf person an appropriate accommodation under the ADA may be a sign language interpreter. If an interpreter is needed and is not provided or an unqualified interpreter is provided, the business or entity may be subject to Department of Justice enforcement action or a lawsuit.

Description of Bill: The bills amend the Deaf Persons’ Interpreters Act to make the scope of Michigan’s law comparable to the federal Americans with Disabilities Act of 1990. Qualified interpreters would now be required in all circumstances enumerated in the Americans with Disabilities Act. Reasonable notice would be required if a qualified interpreter is needed. Qualified interpreter is defined in House Bill 4208 as a person who is certified through the National Registry of Interpreters for the Deaf or by the Division of Deaf and Hard of Hearing in the Department of Labor & Economic Growth.

Senate Bill 25 grants rulemaking authority to the Division of the Deaf and Hard of Hearing. Procedural rules are required. Rules establishing minimum credential requirements and levels and minimum standards of practice and continuing education are permissive. The division is required to seek advice from the Department of Education and other state and national advocates selected by the division director. The rules must be coordinated with the Department of Education and the Michigan Administrative Rule for Special Education (MARSE).

As of October 1, 2007, a person who knows that he or she does not meet the definition of qualified interpreter and misrepresents that fact would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$500 or more than \$1,000, or both. Upon the effective date of rules promulgated by the Division for the Deaf and Hard of Hearing, an appointing authority that willfully fails to provide an interpreter when one is required is subject to a civil fine of not less than \$1,000 and not more than \$10,000. An applicant for certification as a qualified interpreter by the Division for the Deaf and Hard of Hearing or a qualified interpreter certified through the division who violates the act is subject to rejection of the application for certification or revocation, suspension, or limitation of certification.

A person certified through the National Registry of Interpreters for the Deaf or any other national organization recognized by the Division must be issued a state certification upon filing a complete application and paying the fees. Senate Bill 25 establishes \$30 application and renewal fees. Examination fees are established as \$125 for residents of the state and \$175 for non-residents. Any person possessing a Michigan Quality Assurance Certification at levels I, II, or III is considered qualified until that certification status expires. Such a certificate may be renewed annually until it expires and retesting is required.

The bills are tie-barred.

Summary of Arguments

Pro: Interpreters are crucial intermediaries for deaf people in school, health care settings, courts, and even the work place. It is therefore very important that communications be correctly translated. Unfortunately, current law limits the application of interpreter standards to the legal setting and is not sufficiently clear on the standards.

The bill does not impose any new requirements on Michigan businesses, state and local governments, courts, and other appointing authorities. It merely makes Michigan's law consistent with federal law.

The bill provides much greater clarity relating to the definition of "qualified interpreter" than Michigan's current law. This clarity will be helpful to those attempting to comply and to the public in knowing that their communication is more likely to be accurately interpreted.

In certain situations having a qualified interpreter is more than just helpful. In a health care situation interpreting the patient's symptoms and the doctor's instructions accurately can mean the difference between life and death. In an educational setting it is generally understood that interpreter is critically important to the ability of a deaf person to learn.

Con: The bills unnecessarily duplicate federal law and may be confusing to those trying to comply.

The bills will exacerbate an already serious shortage of qualified interpreters. The advent of Video Relay Service and the federal No Child Left Behind legislation have increased the demand for qualified interpreters and have reduced the supply available in business, medical, and other settings covered by these bills.

Fiscal/Economic Impact

(a) Department

Budgetary: The bills increase the responsibilities of the Division of Deaf and Hard of Hearing.

Revenue: The bills specify the fees that may be charged for application, renewal, and examinations.

Comments:

(b) State

Budgetary: The bills will have no budgetary impact on the state.

Revenue: The bills will have no revenue impact.

Comments:

(c) Local Government

Comments: Local governments are affected only to the extent that they are already covered by the ADA.

Other State Departments: All state departments are affected, because state programs are covered by Article II of the ADA.

Michigan's Administrative Rules for Special Education (MARSE) specify the educational and training requirements for classroom personnel who provide instruction and assistive services for disabled students, including the deaf and hard of hearing. The Departments of Labor & Economic Growth and Education participated in a work group in 2004 with advocates and other stakeholders interested in deaf and hard of hearing issues. This bill was one of the recommendations of this work group. Another major recommendation was modification of the MARSE rule. The two recommendations, strengthening Michigan's law and the MARSE rule, were intended to work in tandem to increase interpreter qualifications and improve educational services to deaf and hard of hearing students. Other recommendations were designed to increase the supply of qualified interpreters by promoting interpreting as a profession and increasing the number of training programs.

Any Other Pertinent Information: None.

Administrative Rules Impact: The bill includes both mandatory and permissive rulemaking authority for the Division of Deaf and Hard of Hearing in the Department of Labor & Economic Growth. Mandatory rulemaking would govern procedures for application, testing, revocation, suspension, or limitation of certification, continuing education, renewals, and grievances. Permissive rulemaking relates to minimum credential requirements and levels and minimum standards of practice and continuing education. The rules are required to be coordinated with the Department of Education and the Michigan Administrative Rule for Special Education.